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## FISCAL IMPACT REPORT

SPONSOR: Miera DATE TYPED: 03/18/03 HB 455/aHAFC/aSEC

SHORT TITLE: Public School Capital Outlay SB \_\_\_\_\_

ANALYST: Kehoe

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
\$1,250.0	\$			Non-recurring	PSCOF
\$2,600.0	*\$2,549.3		See Narrative	Recurring	PSCOF
			\$700.0	Recurring	PSCOF
	(\$15,000.0)			Non-Recurring	PSCOF

(Parenthesis ( ) Indicate Expenditure Decreases)

\*LFC recommendation for FY04. The \$1.1 million appropriation for the core administrative functions of the Deficiencies Correction Unit contained in this bill duplicates the LFC recommended appropriation in the General Appropriation Act.

### SOURCES OF INFORMATION

State Department of Education (SDE)  
 Deficiencies Correction Unit (DCU)  
 LFC Files

#### Synopsis of SEC Amendment

The Senate Education Committee amendment to House Bill 455/aHAFC makes the provisions of Sections 1, 2, 13 and 14 of this bill effective July 1, 2003. The provisions include: creation of the proposed new Authority; the Authority's approval before a school district can begin construction or letting of contracts for construction; two repeals and the effective date of the provisions. The State Board of Education approval prior to construction or contract letting for construction, and creation of the Deficiencies Correction Unit are repealed effective July 1, 2003.

#### Synopsis of HAFC Amendments

The House Appropriations and Finance Committee amendments to House Bill 455 are as follows:

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Item 1 is a technical correction in the title.

Item 2 clarifies that the proposed new Public School Facilities Authority will assist school districts with the “procurement of” architectural and engineering services.

Item 3 clarifies that the Authority will assist school districts with “management oversight and construction activities.

Item 4 allows project management fees of up to five percent of the average annual grant assistance, approximately \$200 million for the last three fiscal years, even if the oversight of a project does not require being physically on the premises.

Item 5 increases the appropriation for updating and refining a statewide assessment study from \$1,000,000 to \$1,250,000.

Item 6 is a technical correction.

Item 7 appropriates \$1,100,000 from the Public School Capital Outlay Fund to the Public School Capital Outlay Council (PSCOC) for the core administrative functions of the Deficiencies Correction Unit in fiscal year 2004. This appropriation duplicates the recommended funding for this purpose in the General Appropriation Act; and authorizes PSCOC to expend up to an additional \$700,000 of the Public School Capital Outlay Fund balances in fiscal year 2004 for the functions of the proposed Authority.

Item 7, new Section 4 requires that outstanding deficiencies be identified and that awards made for this purpose be complete by June 30, 2003, however the funds must be expended no later than June 30, 2006.

Items 8 and 9 are technical corrections.

Item 10 earmarks \$15 million from critical capital outlay funding for fiscal year 2004 to allocate for projects for schools eligible for additional program units, indebted at not less than ninety percent of the total general obligation debt authorized by law, and that have a net taxable value per MEM equal to less than fifty percent of the average statewide net taxable value for MEM. More specifically, the allocations are for new growth schools such as Hatch and Gadsen.

Item 11 is a technical correction.

Item 12 and 14 excludes direct legislative appropriations for reauthorizations of appropriations made after January 1, 2003 to school districts from calculations made to determine the percentage of participation by both the state and the school district for capital projects and educational technology.

Item 13 changes the PSCOC’s annual reporting date from December 1 to December 15.

### Synopsis of Original Bill

House Bill 455 amends the Public School Capital Outlay Act to create a Public School Facilities Authority; provides for preventive maintenance plans; provides a method for calculating

amounts of school district participation in funding capital projects; amends the Technology for Education Act for calculating the percentage to be used in offsetting direct legislative appropriations to school districts for technology; amends the Public School Code; increases the state match for SB 9 funding; and appropriates \$1,000,000 from the Public School Capital Outlay Fund for an updated public school assessment. The bill contains an emergency clause for certain sections.

### Significant Issues

House Bill 455, Section 1, creates a Public Schools Facility Authority (PSFA) to support the Public School Capital Outlay Council in implementing the Public School Capital Outlay Act, and to provide oversight of school construction and renovations, and to ensure compliance with the new standards-based capital outlay program to take effect September 1, 2003. The bill proposes to merge four of the seven existing staff members of the SDE Capital Outlay Unit with the existing 25 staff members of the DCU, including all related equipment and contracts. The director of the new Authority will be required to have expertise in construction, architecture or project management and will be hired by PSCOC. The director and two deputies, hired with the consent of PSCOC, shall be exempt from the State Personnel Act. Twenty-five exempt employees, currently exempt, would become classified effective July 1, 2003.

Under current law, both the SDE Capital Outlay Unit and DCU support PSCOC. Both units are housed in the same complex in order to collaborate and share responsibilities to maximize the state dollars appropriated for critical capital outlay and deficiency correction funding, and for oversight of public school construction.

Section 2, amends the Public School Capital Outlay Act to transfer school construction approval from the state superintendent of schools to the director of the new Authority. However, the bill requires that all actions taken by the Authority will be consistent with educational programs conducted pursuant to the Public School Code. In those instances where a potential or perceived conflict exists, the state superintendent will be consulted. The provision also requires that the director of the Authority forward a copy of the approval application to the state superintendent and that SDE be notified of both project approvals and disapprovals. The state superintendent will certify that the construction will support the educational program of the school district.

Section 3 authorizes PSCOC to disburse funds from PSCOF to the school district prior to commencement. The bill authorizes PSCOC to disburse up to ten percent of the portion of a project cost funded, or five percent of the total project cost, or whichever is greater. Grant awards beyond the initial amount disbursed will be made on a cost reimbursement basis, or may be paid directly to a contractor. Current law limits the amount of PSCOF proceeds that can be used for project management expenses for correcting deficiencies to three percent. Senate Bill 513 changes the amount to five percent of the annual grant assistance authorized from PSCOF. Within this section, \$1 million is appropriated from PSCOF to the PSCOC for the purpose of updating and refining the statewide assessment study, and for training state and local officials on the use of the database and other data management-related issues identified by the council.

Section 4 adds a new section to the Public School Capital Outlay Act requiring school districts to develop and implement preventive maintenance plans. Beginning September 1, 2003, school districts will not be eligible for PSCOC funding unless the district has a preventative maintenance plan in place that has been approved by PSCOC. The proposed Authority would be re-

responsible for developing guidelines to assist the school districts in establishing and implementing the plans. The Public School Capital Outlay Task Force has recommended that the Authority work with school districts to develop a model maintenance plan and to consider certification of maintenance staff.

Sections 5 and 7 amend the Public School Capital Outlay Improvements Act (PSCIA) by increasing the imposition of a district's two mill levy from a maximum of four years to a maximum of six years with voter approval. The bill allows school boards to discontinue, by resolution, the tax levy at any time during its authorization.

Section 6 provides the procedures for the election.

Section 8 provides for the state distribution to school districts imposing the tax under the PSCIA. Beginning in fiscal year 2004 and thereafter, the bill provides for a minimum state distribution to all school districts that have imposed a tax under the PSCIA. The distribution is determined by multiplying the district's forty-day total program units by the number of mills approved by the voters for the levy by five dollars. The amount is allocated regardless of the program guarantee.

Section 8 further amends Section 22-24-5 NMSA 1978 to provide a series of calculations to be used to determine the percentage of participation by both the state and the school districts in capital school projects. According to SDE, the recommendation of the Public School Capital Outlay Task Force (PSCOTF), as presented by the Legislative Council Service, is based on the premise that the formula should:

- Be transparent and objective;
- Be based upon the equity principle;
- Reward those districts that tax themselves above the statewide average;
- Not penalize districts for other local and federal funds they may have available for capital outlay;
- Continue to have a state distribution that averages approximately 50 percent of the total statewide effort;
- Continue to have a 10 percent minimum state share; and
- Be recalculated annually using current data to reflect changes in the financial capacity of school district.

The formula also takes into account all direct legislative appropriations made for capital school projects and offsets a portion of this amount based on the percentage of participation. Grant awards will be reduced by this amount. In those instances in which a school district has used all of its local resources, the PSCOC may fund up to the total amount of the projects. This section also specifies that grant awards will not be made until a school district has an approved preventive maintenance plan in place. The PSCOC is also responsible for regularly reviewing and updating the statewide adequacy standards.

Section 9 outlines the procedures and eligibility criteria for school districts to receive public school capital outlay funding. The provision provides the calculations to determine eligibility.

Section 10 provides a series of calculations to be used to determine the school district's estimated adjusted entitlement to distributions from the Educational Technology Fund. This calcu-

lation sets a base amount that all districts will receive independent of membership. Those districts whose entitlement is at or below this threshold will receive the base amount. The remaining districts will receive their entitlement based on additional calculations. The districts will receive 90 percent of their initial estimated entitlement in July, with adjustments made to the final entitlement in January using final funded membership. This final allocation will not cause a reduction in the original adjusted amount.

Section 11 requires an annual report to be filed, at a time specified by SDE. The report shall include information regarding distributions received, direct legislative appropriations for educational technology received, expenditures made, and such other related information as may be required by SDE.

Section 12 contains temporary provisions to ensure a smooth transition from the current structure to the PSFA, including the reassignment of up to four FTEs from the PSCOU, the absorption of the entire DCU, as well as the transfer of appropriations, money, records, property, equipment and supplies to the PSFA on July 1, 2003. The superintendent of public instruction and the PSCOC shall jointly identify the property to be transferred to the PSFA.

Section 13 repeals Sections 22-20-3 and 22-24-4.2 NMSA 1978. Repeals provision requiring approval of State Board of Education before construction can begin and repeals creation of the Deficiencies Correction Unit.

Section 14 makes the effective date of Section 1, 2, 12 and 13 July 1, 2003.

Section 15 is the emergency clause for all other sections.

## **FISCAL IMPLICATIONS**

The Legislature has appropriated \$200 million to the Public School Capital Outlay Fund for fiscal years 2001-06 to correct deficiencies. A total of \$102.4 million has been allocated to school districts for correcting the deficiencies.

Laws 2002, Chapter 65 provides that up to three percent of all funds appropriated for correcting deficiencies may be used for field project management fees. The fees currently provide operational funding for 18 FTE of DCU. House Bill 455 allows that up to five percent of appropriated funds may be used for project management.

During fiscal year 2003, approximately \$1.5 million has been transferred from the general fund portion of PSCOF to provide operational funding for 18 FTE for DCU's field management. The DCU administrative staff (7) is also supported with \$1.1 million from PSCOF for FY03. For FY04, LFC recommends \$2,549.3 from PSCOF and the Executive is recommending \$2,097.1 for the administrative functions and field management costs from PSCOF. The current year's budget for SDE staff (7) is approximately \$270,000 from the general fund.

Current and projected costs extracted from PSCOF intended for correcting deficiencies through FY04 is approximately \$9.5 million, including the proposed \$1,250.0 for updated school assessments. It is unclear how the new authority will be funded once deficiencies have been completed.

Continued funding for 29 FTE from PSCOF at the projected levels will impact the ability to correct public school deficiencies. Of this 29 FTE, it is estimated that 22 are field staff and seven are administrative in nature.

### **OTHER SUBSTANTIVE ISSUES**

By law, the Construction Industries Division has the responsibility to review all school construction plans for compliance with building codes, including general construction and ADA accessibility standards, mechanical and electrical codes, prior to issuing building permits. In addition, the construction industry inspectors must conduct on-site inspections throughout the construction process to assure compliance with building codes. The State Fire Marshal also must conduct on-site building inspections. In addition, the Energy, Minerals and Natural Resources Department reviews school plans for building energy efficiency and the potential use of renewable energy. The role of the Authority in relation to these other agencies is unclear.

### **POSSIBLE QUESTIONS**

1. The proposed staffing for the new Authority would provide 22 field staff to provide technical assistance and oversight for projects at the school district site. How many projects will require direct supervision by the Authority staff?
2. What funding source and amount will be used to continue the Authority when the Public School Capital Outlay fund intended for deficiency corrections has been exhausted?
3. How will the new Authority assure the legislature that the construction will be of the highest quality for the money spent?
4. What are some of the types of duties performed by the members of the administrative and field staff?

**LMK/njw:sb**